# CP—HC

## NC

### 1NC—Historical-Categorical CP

#### Text: The United States federal government should locally delegate gun control using the historical-categorical approach described in Heller.

#### Effective urban gun control can be implemented in urban areas using existing 2A doctrine—the counterplan allows for hyper-local tailoring

Blocher 13 (Joseph Blocher, Professor of Law at Duke University, “Firearm Localism”, 2013)//Miro

This Article argues that future Second Amendment cases can and should incorporate the longstanding and sensible differences regarding guns and gun control in rural and urban areas, giving more protection to gun rights in rural areas and more leeway to gun regulation in cities. Part I describes the significant differences between urban and rural areas with regard to the prevalence, regulation, perceived importance, use, and misuse of guns. Violent gun crime and support for gun control are [is] heavily concentrated in cities, while opposition to gun control is strongest in rural areas, where the costs of gun crime are lowest. Rural residents are far more likely to own firearms than people living in cities, and have more opportunities to use them for lawful activities like hunting and recreational shooting. These differences, while certainly not universal—not every city has stringent gun control,11 nor do all rural residents oppose it—are so stable and well-recognized that they have calcified into what are often referred to as different gun “cultures.”12 But while this cultural divide is well-established and long-standing, it rarely figures prominently in discussions of constitutional doctrine, and rarer still is it seen as an opportunity rather than an obstacle. This is unfortunate and unnecessary, because Second Amendment doctrine already contains the tools with which to achieve geographic tailoring. Heller and McDonald left the contours of Second Amendment doctrine fuzzy, aside from approving a set of “presumptively lawful” gun control measures.13 The opinions did, however, suggest two major jurisprudential alternatives: one rooted in historical analysis, the other in interest balancing.14 Part II shows how either road can lead to a locally tailored Second Amendment.15 First, the majorities in Heller and McDonald endorsed a historical-categorical approach that evaluates contemporary gun control measures based on whether they have “longstanding” historical analogues.16 This approach is categorical in that it eschews interest-balancing, focusing on line-drawing rather than cost-benefit analysis.17 Lower courts applying it have looked not just to Founding-era regulations, but to the broad sweep of gun control throughout American history.18 Under this historical-categorical approach, the fact that the United States has a deeply rooted tradition of comparatively stringent urban gun control is an argument for treating contemporary urban gun control as, if not “presumptively lawful,”19 at least meriting special deference. As noted above and described in more detail below, 20 cities have traditionally enacted the country’s strictest gun control measures, including handgun bans, safe storage requirements, limits on public carrying, and prohibitions on shooting guns within city limits. To be sure, the historical record is neither complete nor uniform. But it appears to be at least as persuasive as the evidence supporting other Second Amendment rules specifically approved by the Court in Heller—the ban on felons in possession, for example.21

#### It’s competitive: Historical-categorical doctrine is incompatible with handgun bans

Blocher 13 (Joseph Blocher, Professor of Law at Duke University, “Firearm Localism”, 2013)//Miro

On some level, this can be reconciled with the one-size-fits-all principle stated in McDonald. Local tailoring of constitutional rights does not necessarily mean creating separate rights, at least not any more than the various rules governing speech regulations in public parks,246 military bases,247 and schools248 indicate a multiplicity of First Amendment rights. The interpretation-construction distinction endorsed by some constitutional scholars provides further support for this conclusion. It is premised on the notion that there is a difference between the semantic meaning of a constitutional provision and the constitutional doctrine constructed to implement it.249 On this reading, the meaning of the Second Amendment can be consistent throughout the country (a product of interpretation), even as the doctrine applying it varies locally (a function of construction). Lawrence Solum, a chief proponent of the interpretation-construction distinction, similarly points out that the meaning of the First Amendment says nothing about “time, place, and manner” doctrine.250 The latter is a matter of construction rather than interpretation, and the restrictions it permits vary geographically. Just as local tailoring of constitutional doctrine would not necessarily create a multiplicity of constitutional meanings, neither would it permit local governments to pass whatever gun control they please. Precisely defining the range of permissible local variation is impossible, because Second Amendment doctrine itself is still in flux, but tailoring would operate only at the margins. City-wide handgun bans will almost certainly be found unconstitutional, as they were in Heller. And yet gun prohibitions are presumptively permissible in “sensitive places” like government buildings and schools—a form of micro-level local tailoring. Determining where a particular local gun law (a permit requirement, for example, or a ban on concealed carrying) falls on this spectrum of permissibility will depend on the relevant history, the governmental interests involved, and the degree to which private interests are burdened. The local nature of the action would simply be an additional factor to consider.

#### Specifically, permitting conditions are distinct from handgun bans and can be implemented using Heller doctrine.

Wiggins 15 (Ovetta Wiggins, Reporter for the Washington Post, “D.C. can require gun applicants to provide a ‘good reason’ for now”, June 14 2015)//Miro

A federal appeals court has ordered a stay of a judge’s ruling in a challenge to the District’s gun laws. The U.S. Court of Appeals for the District of Columbia temporarily blocked a decision made last month by U.S. District Judge Frederick J. Scullin Jr. that stopped the District from enforcing a key provision of its gun laws. That provision requires a person to state a “good reason” for carrying a weapon in order to obtain a permit from police. The stay, granted late Friday, is a minor victory for the District in the ongoing court battle over its gun laws. Scullin ruled last year that the District’s long-standing ban on carrying firearms in public was unconstitutional. As a result, the D.C. Council reworked the law in September, but included a condition — known as the “good reason/proper reason” requirement — for obtaining a permit. Similar provisions exist in Maryland, New York and New Jersey. Last month, Scullin said in a 23-page opinion that the condition “impinges on Plaintiffs’ Second Amendment right to bear arms,” because it fails to target dangerous people or specify how or where individuals carry weapons. [Federal judge again rules key part of new D.C. gun law unconstitutional] The appeals court said the temporary stay was intended to give it additional time to consider whether to block the lower court’s ruling. “The purpose of this administrative stay is to give the court sufficient opportunity to consider the merits of the motion for stay and should not be construed in any way as a ruling on the merits of that motion,” the order reads. The appeals court also ordered the parties to respond by Thursday to a motion to block Scullin’s decision pending an appeal of the ruling. Brian Wrenn, two other individual plaintiffs and the Second Amendment Foundation filed the legal challenge to the city’s gun laws, which are among the strictest in the country. The provision being reviewed gives police discretion to grant licenses to applicants who show “good reason to fear injury to his or her person or property” or “any other proper reason for carrying a pistol,” such as employment transporting cash or other valuables. Under the city’s laws, an applicant must pass background checks and training requirements, and Police Chief Cathy L. Lanier makes final licensing decisions. Firearms also cannot be carried in the District in schools, hospitals, government buildings, public transportation vehicles, establishments that serve alcohol, stadiums or arenas, or within 1,000 feet of a dignitary under police protection.

### 1NC—HC CP—Federalism N/B

#### Net Benefit—

#### Historical-categoricalism marks a return to federalism—it rebalances the constitutional order and allows for local experimentation

Blocher 13 (Joseph Blocher, Professor of Law at Duke University, “Firearm Localism”, 2013)//Miro

There are, of course, problems with constitutional localism in general, and with firearm localism in particular. Section III.C will address the latter. As to the former, any kind of localism carries with it the political risks familiar to students of federalism. As James Madison noted, “[a]mong the numerous advantages promised by a well constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction.”251 Heather Gerken explains: The nationalists’ objection to conventional federalism typically takes one of two forms. The first is a worry that local power is a threat to minority rights. The second is a related concern about what we might loosely analogize to the principal-agent problem—the fear that state decisions that fly in the face of deeply held national norms will be insulated from reversal. Both find their strongest examples in the tragic history of slavery and Jim Crow.252 That tragic history includes efforts to render African-Americans defenseless by denying them the right to keep and bear arms.253 How, in light of that risk, can there be any allure in firearm localism? Part of the answer lies in the comparative ease with which local decisions that “fly in the face” of national or state norms can be reversed. From the perspective of the Federal Constitution, cities are creatures of state law, and their decisions can generally be overturned at the state level.254 Indeed, state preemption laws do exactly this (though, as I argue below,255 they go too far in doing so). Moreover, as David Barron notes, “there is little risk that a city will remain a scofflaw for long. The fact that cities are not fully sovereign means that municipal taxpayers enjoy relaxed standing requirements in suits against their cities for disobeying the law.”256 Even holding aside the ability of states or litigants to check localized tyranny, “[s]ome have argued, in fact, that local political processes are less susceptible to capture by special interests” than larger governmental units since it is easier for people to exit local governments.257 As Robert Cooter notes, “[t]he ‘exit principle’ implies the ‘federalism of individual rights,’ by which I mean that courts should tolerate more interference with individual liberty when the effects are localized.”258 Judge J. Harvie Wilkinson III pointed out in his criticism of Heller that citizens who oppose gun control “remain free to move to other localities more protective of gun rights.”259 And even if such local variation cannot totally be erased by state governments, its persistence might not necessarily be a bad thing. As Gerken and others have shown, local governments and political minorities who resist broader norms can protect minority voices while facilitating broader democratic engagement.260 Local experimentation with gun control has sometimes been motivated by those very goals. The city council members who enacted Washington’s handgun ban “thought the D.C. law would spark a nationwide trend to ban all handguns in America—if not all guns period.”261 Similarly, one of the trustees who voted for Morton Grove’s handgun ban told a reporter, “We felt gun control would have to be a grass-roots effort, as with child labor and pollution laws, and wanted to send a message to other villages and towns that they could enact such ordinances.”262 There is some reason to think that this signaling was effective,263 even though it eventually served as a greater inspiration to opponents of gun control than to its supporters.264

#### The brink is now—federal government strength is growing and undermining scientific innovation—only a return to dual federalism solves.

Noah Smith 14, Bloomberg, “A Better Future Needs a Bit of a Push”, 9/17, <http://www.bloombergview.com/articles/2014-09-17/a-better-future-needs-a-bit-of-a-push>

In early 2013, Thiel debated fellow Silicon Valley titan Marc Andreessen, a famous tech optimist. Andreessen made some great points, basically arguing that technology makes qualitative, not quantitative, changes in our lives, and that we’re on the cusp of great things. Of course I agree. Andreessen also had the macroeconomics right. But, as blogger Dan Wang notes, Thiel made some important points too, and if we want to speed up technological innovation, there are gems of insight to be found in his pessimistic take. Thiel identifies one big problem as stagnation in energy. For centuries, we kept getting better energy sources -- first coal, then oil. That powered faster transportation, cheaper construction, bigger appliances and better materials. But now that energy quality has started to backslide, we’ve had to switch from creating new physical technologies (“atoms”) to creating new information technologies (“bits”). The basic question is: What comes after oil? Nuclear power has been a bust so far, with its huge fixed costs and high-profile disasters. Natural gas is good, but is really just a somewhat cleaner replacement for coal. The only real bright spot (apologies for the pun) is solar, whose costs have plummeted dramatically for decades, and which is now almost as cheap as coal. But even if solar eventually gives us ultra-cheap electricity during the day, the lack of good storage technology means that gas or coal or nuclear plants will still have to be built for the nighttime, and we will still need some way to power our cars, planes, trains and ships. So solar can’t be the whole solution. We need better energy storage technology, and better energy tech in general. And how are we going to get it? In a 2011 article in National Review, the libertarian Thiel declared that government -- yes, government -- is going to have to be a big part of the solution: The state can successfully push science; there is no sense denying it. The Manhattan Project and the Apollo program remind us of this possibility. Free markets may not fund as much basic research as needed. In other words, even libertarians are realizing that it’s no longer good enough to boldly declare, as Ronald Reagan did, that “government is the problem.” Another important Thiel point is that our public infrastructure is decaying. This is partly a result of stagnant spending, but we’re also getting less bang for our buck. Infrastructure costs in the U.S. are absurdly high compared with Europe or East Asia. As Thiel lamented in 2012: There are ways that the government is working far less well than it used to. Just outside my office is the Golden Gate Bridge. It was built under FDR’s Administration in the 1930s in about three and a half years. They’re currently building an access highway on one of the tunnels that feeds into the bridge, and it will take at least six years to complete...There’s an overall sense that in many different domains the government is working incredibly inefficiently and poorly. Bringing down high infrastructure costs will involve taking on a lot of entrenched interests -- government contractors, property owners and unions. Conservatives and libertarians can be the ones to take on this job, but only if they realize how important government-provided infrastructure is to economic efficiency and technological progress. A third good point by Thiel is that regulation may already be slowing progress dramatically in the field of biosciences. This is a drum that Alex Tabarrok and Joseph Gulfo have also been beating. We would like to think, to paraphrase Princess Leia, that the more the government tightens its grip, the more that clever innovators will slip through its fingers -- but in the biomedical field, this may not be happening. So although I share Andreessen’s overall optimism, I think we would be foolish to ignore Thiel’s warnings. In the areas where we have slowed down -- energy, infrastructure, and biomed -- we need a more efficient government to push things along where necessary, and to get out of the way where necessary. Progress isn't always automatic -- it could use a helping hand.

#### Pragmatic environmental policy is effective and key to prevent extinction

Simpson 10 (Francis, College of Engineering, Vanderbilt University, “Environmental Pragmatism and its Application to Climate Change The Moral Obligations of Developed and Developing Nations to Avert Climate Change as viewed through Technological Pragmatism”, Spring 2010 | Volume 6 | Number 1)

Pragmatism and Footprinting

Environmental pragmatism is a relatively new field of environmental ethics that seeks to move beyond the strictly theoretical exercises normal in philosophy and allows the environmental movement to formulate substantial new policies (Light, 1). Environmental Pragmatism was initially posited by Bryan Norton and evolved to not take a stance over the dispute between non-anthropocentric and anthropocentric ethics. Distancing himself from this dispute, he preferred to distinguish between strong and weak anthropocentricism (Light, 290-291, 298). The main philosophers involved in advancing the debate in environmental pragmatism include Eric Katz, Andrew Light, and Bryan Norton. This particular discipline advocates moral pluralism, implying that the environmental problems being faced have multiple correct solutions. Light argues that the urgency of ecological crises requires that action is necessary through negotiation and compromise. While theorists serve to further the field of environmental ethics and to debate the metaethical basis of various environmental philosophies, some answers to questions are best left to private discussion rather than taking time to argue about them publically (introduction of pragmatism). Pragmatism believes that if two theories are equally able to provide solutions to a given problem, then debate on which is more is argued that: “the commitment to solving environmental problems is the only precondition for any workable and democratic political theory” (Light, 11). While the science behind a footprint is well understood, what can the synthesis of environmental pragmatism and footprinting tell us about the moral obligation to avert climate change? How does grounding the practice of sustainability footprinting in environmental pragmatism generate moral prescriptions for averting climate change? Environmental Pragmatism necessitates the need for tools in engineering to be developed and applied to avert the climate change problem, since pragmatism inherently calls for bridging the gap between theory and policy/ practices. With the theory of pragmatism in mind, further research and development of tools such as life-cycle analysis and footprinting are potential policy tools that are necessary under a pragmatist viewpoint so that informed decisions can be made by policy makers. Since the role of life-cycle analysis and footprinting attempt to improve the efficiency and decrease the overall environmental impact of a given process, good, or service, environmental pragmatism would call for the further development and usage of these tools so that we can continue to develop sustainably and fulfill our moral obligation to future generations. By utilizing footprinting and life-cycle analysis, it becomes possible to make environmentally conscious decisions not only based upon a gut instinct but additionally based on sound science. Finally, in regards to averting climate change, footprinting and life-cycle analysis offer another dimension to traditional cost-benefit analysis and can allow for our moral obligation to future generations to weigh into final decisions which will eventually result in policies and/ or a production of a good or service. Since traditional cost benefit analysis does not account for the environment explicitly, pragmatism would call for the application of these tools to ensure that the environment is adequately protected for future generations. Climate change modeling inherently contains many unknowns in terms of future outcomes and applied simplifications, but these factors should not be enough to hold us back from an environmental pragmatism stand point. Rather than hiding behind a veil of uncertainty with the science, the uncertainty of the possible catastrophic outcomes demands action on the part of every human individual. Environmental pragmatism could also adopt a view point like the precautionary principle where a given action has great uncertainty, but also great consequence (Haller). Since we are attempting to protect human lives and prevent unnecessary suffering, environmental pragmatism would dictate that we should take action now and stop debating the theoretical aspects of this problem. A moral obligation exists to protect human life, and it becomes our obligation to avert climate change. Despite the relatively high economic costs of averting climate change, it is worth noting that the creation of green jobs and new sectors will help to stimulate the economy rather than completely hindering it. People inherently fear change, and it is my opinion that averting climate change requires a drastic change in our consumption patterns, an important reason why people are resisting averting climate change. From an environmental pragmatism viewpoint, it is humanities responsibility to avert climate change before it is too late since we have a moral obligation to protect the future of humanity and the biosphere.

### 1NC—HC CP—No L Ptx

#### Avoids the link to politics

Blocher 13 (Joseph Blocher, Professor of Law at Duke University, “Firearm Localism”, 2013)//Miro

Fortunately, these ideological differences are geographically concentrated, which opens an unexplored possibility for a truce: firearm localism, which would give urban areas more leeway to regulate firearms within city limits while preserving the ability of rural areas to maintain their strong gun culture. Thus even if it is impossible to bridge gun culture and gun control culture,118 it is also unnecessary. This should be a welcome result for both camps. Rural residents should not have to weigh their desire to own hunting rifles against the possibility that urban youth will use handguns to shoot each other. And advocates of urban gun control should not have to denigrate the cultural salience of hunting in Montana when their goal is to limit cheap pistols in Manhattan. As New York Mayor Michael Bloomberg and Boston Mayor Thomas Menino, co-chairs of Mayors Against Illegal Guns, recently put it: “[W]e know that a policy that is appropriate for a small town in one region of the country is not necessarily appropriate for a big city in another region of the country.”119 The possibility of such accommodation is all the more important in the wake of Heller and McDonald. By finding the existence of an individual right to keep and bear arms independent of militia service, and then incorporating that right against state and local governments, the Supreme Court raised the possibility of a nationalized approach to gun control—one that would hold cities, states, and the federal government to identical rules. The response to Heller reveals the fault line implicated by that approach: “The reaction broke less along party lines than along the divide between cities wracked with gun violence and rural areas where gun ownership is embedded in daily life.”120 A rigid national standard would flatten these deep differences, potentially to the detriment of bothgun cultures. For members of the rural gun culture who oppose gun control and would prefer stringent review of gun control measures, the threat—as in prior incorporation debates—is that their rights will be watered down.121 Michael O’Shea argues persuasively that the courts are far more likely to protect Southerners, Westerners, and Midwesterners in their right to acquire modern self-loading rifles if the courts can do so without thereby discarding the “assault weapons” laws of the secondary gun culture states, and thereby (as the judges might see it) bringing AR-15s to high-rise apartments in Manhattan.122 Urban residents will likely have the opposite concern: that if the Second Amendment is calibrated so as to give rural residents access to firearms for hunting and other recreational uses, it will thereby prevent city-dwellers from protecting themselves against firearms that are being used for murder. This would effectively force urban residents who might care little about hunting in rural areas to subsidize that activity with their own safety. But the more serious problem with achieving political compromise is that the debate is not simply one about policy analysis. Rather, the underlying conflict is largely about values, and there is no way to resolve such a conflict by appealing to empirics.123 As David Kairys puts it, “[s]omething else is going on, and at its core is a personal, cultural, and political identification of guns with personal self-worth and with our highest ideals.”124 Dan Kahan, who along with Donald Braman has thoroughly investigated the cultural salience of gun control,125 concludes that progress can still be made if voices of moderation, “in the spirit of genuine democratic deliberation, appeal to one another for understanding and seek policies that accommodate their respective world views.”

## 2NR

### Notes

#### Remember—DC only has like 20 to 50 handgun permits per year.

#### Distinction between carrying and ownership—good cause legislation in DC

### 2NR O/V—S

#### The historical-categorical approach solves the *entirety* of the Affirmative’s case—devolving gun control policy solves more effectively for the impacts of the case—that’s Blocher 13.

#### Two warrants—

#### First is permit conditions—DC policy post-Heller proves that local jurisdictions can reduce gun violence while still providing guns for those who need it—DC gives less than 100 people per year permits and makes people go through mandatory training—that’s Wiggins.

#### Second is local tailoring—the CP allows local governments to tailor policies in order to best reduce violence while avoiding antagonism—that means providing mechanisms for hunters in local jurisdictions where hunting is possible and allowing *flexible* laws that avoid racist policing.

### 2NR P—AT:/DB

#### Doing both fails—

#### First the perm is functionally incoherent— you can’t simultaneously ban guns and not ban them—the counterplan specifically allows some people with permits to buy handguns—which is distinct. This is *supercharged* by the NC Blocher evidence—which clarifies handguns bans as being textually and legally distinct from the historical-categorical approach.

#### Further, NC Wiggins evidence indicates that DCs permitting policy is considered distinct from a handgun ban by Heller v. DC—that means that the best topic literature shows the CP is mutually exclusive.

#### Second are the net benefits—

#### Federal intervention into handgun policy collapses the constitutional order, which triggers the federalism impact—only rebalancing by ceding authority to local governments allows for an effective constitutional law regime that solves the net benefit—that’s Blocher

#### <<Extend your other net benefits here>>

### 2NR T—AT:/all

#### I meet— <<explain why>>

#### Counterinterp— The negative may read a counterplan that has a solvency advocate that explicitly distinguishes it from a gun ban. To clarify, that means that agent counterplans and arbitrary PICs are theoretically abusive.

#### I meet my counterinterp— Blocher distinguishes.

#### This is the best middle ground—

#### Textuality— The resolution is an issue of banning private ownership—that means that counterplans that are distinct from bans are negative ground under the resolution. Textuality controls the link to resolvability because you can’t know how to resolve the round without looking to the resolution.

#### Jurisdictional education— Only the counterplan accesses discussion of local jurisdiction versus broader legislative powers and constitutional law—my counterplan allows debaters to become more educated about law doctrine which is a key pre-requisite to outside change.law doctrine which is a key pre-requisite to outside change.

#### <<defense>>

#### I don’t moot the AC—I’m specifically not a handgun ban so they can leverage all of their offense against me. And there’s tons of literature defending federal government involvement—it’s not my fault if they’re not prepared to defend their actor.

### 2NR T—AT:/Condo

#### Condo is good—

#### Education –

#### Real world: Actors analyze a plan from every angle to come to the best decision. You would never only make one argument against a plan.

#### Critical thinking: the most rigorous and diverse challenges creates the most education

#### Turn—voting issue proliferation means we only debate theory instead of substance

#### Fairness – The aff wins more debates despite condo and picks the plan and neg ground thus the neg needs condo to have an equal chance of winning

#### Counter-interp— we get <<x>> conditional advocacy(s), this solves for all of their offense.